

A Review of the Theory of Vested-right (Conflict Mobile) in Contracts and Firms

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Abstract

One of the most complicated issues of international private law is the study of moving conflict, which is pursued by specific and independent rules. In fact, this kind of conflict is a combination of conflicts of laws in space and time. The examination of conflict resolution rules and, in particular, the fixed or variable nature of connecting factors have been accepted in consensus as a tool for limiting the scope of the moving conflict. Although the analysis of the nature of the connecting factors is in a situation that definitely gives a general overview of the extent of the moving conflict impact, there are always issues such as contracts or companies that are skeptical to be entered to the range of moving conflict. Contracts and companies are of the areas in which it can be considered to be subject of the rules of moving conflict. This matter and also whether moving conflict is applicable or not in the case of company nationality change and contracts with regard to the principle of autonomy are the controversial issues. They often reluctantly express the moving conflict of the firms. This paper attempts to answer this question.

Keywords

Moving Conflicts, Variable Connecting Factors, Constant Connecting Factor, Principle of Autonomy, Main Company Center.

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Concept and Procedure of Indivisibility of Litigation and Judgment

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Abstract

The concepts and procedure in “Indivisible Litigation” and “Indivisible Judgment” in Iran are very vague. It is not found even a simple definition for the indivisibility or divisibility in the law in order to find the concept and the examples of divisible litigation and divisible judgment. This is also a matter of judicial proceedings and case law in our legal system. When the question is about separation of a part of a litigation this is the case of divisible litigation but when the case is effects of a judgment on other parties of the litigation that have not participated in way of attack on judgment, the case is related to the indivisibility of judgment. The theory of representation between parties is not fully accepted in French Law. In our legal system extending the effects of judgment has been accepted which is proximate to agency theory.

Keywords

Plurality of demands, Divisibility of Litigation, Attack on Judgment, Extend of Judgment.

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Priority of Right to Force the Fulfilment of an Obligation over the Termination Right in the Awards of Courts of Iran and its Criticism

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Abstract

In case of promisor's failure to perform the obligation, Iranian courts procedure, according to well-known theory in jurisprudence and law, enforces the promisor to perform obligation initially. Then, if the performance of the obligation is impossible even by third party at the promisor's expense, the promisee is entitled to terminate the contract. The aim of this precedent and its basis is the prevention of destabilizations; however, not only does not lead to stabilize the contracts but also it cause anarchy, abuse of obligor in bad faith, annoyance of obligee in good faith, delaly and preclusion of wealth circulation and expedition of trades. This issue has been examined in jurisprudence by this article and it will be shown that such procedure and its bases lacks regional, rational, legal foundation.

Keywords

Contract Breach, Confrontation of Obligations, Jurisprudence, Termination of Contract, Compulsory Right.

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Complain from the Civil Judgment after the Moratorium

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Abstract

The Civil Procedure Law, despite the deadline for complaint from the judgment, has failed to express its rules, effects and details and we face a number of shortcomings and silence in this regard, including the fact that the status of the application for a rehearing after the deadline is not explicitly stated. Also, the status of early and premature appeal has not been determined. Most importantly the time of the appeal beyond the deadline after the resolution of the excuse has been neglected, despite the legislator's attention to this issue in arbitration, which has been led to the basis for the examination of various probabilities. The review of the issue shows that the reasonable and acceptable solution is the acceptance of the renewal of the legal moratorium on the complaint after the resolving of excuse.

Keywords

Complaint from the Judgment, Moratorium, Protestation, Appeal, Appeal to the Supreme Court, Rehearing.

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Duty to Mitigate the Damage under Convention on Contracts for the International Sale of Goods

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Abstract

Under the Convention on Contracts for the International Sale of Goods (CISG), the injured party as a result of a breach of contract shall take reasonable measures in order to reduce the damage, and if, while having the ability, he fails in this regard, it will not be compensated for the damages that can be avoided. Taking inadequate and unreasonable measures will have the same result. Also, the costs of reasonable measures incurred injured party in reducing of damage are also considered as damages resulting from breach of contract, even if these measures do not provide the desired result. Based on the "reasonableness" condition that is considered in relation to the injured party actions in order to reduce the damage, these measures should indicate a reasonable effort and cost less than possible damages. This article aims to explain the concept of duty to mitigate the damage and to investigate related issues in CISG.

Keywords

Duty to Mitigate the Damage, Convention on Contracts for the International Sale of Goods, Responsibility, Anticipatory Breach.

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An Exploration into the Nature and Property of Information with Legal and Economic Viewpoint

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Abstract

The strategic role of information in generating wealth and power, is of great importance in the current world. Therefore, a massive data transfer cycle has been created. One of the ways to do contractual transfer can be the trading of information and data. But, the authenticity of such transactions depends on proving the property of information. Because it is property which can be the subject of transactions. Therefore, in the present paper, benefiting from economic approaches (especially the economics of information) and legal rules governing the property of objects, we tried to investigate the property of information and some of the issues surrounding it such as; the legal nature of information. In this regard, we emphasized that information is not only an instance of property, but also a separate form of property, unless it takes on an innovative or creative form, in which case it will be among intellectual properties.

Keywords

Information, Property, Intellectual Property.

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Jurisdiction of Arbitral Tribunal in Yukos Oil Case

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Abstract

In 2005, the majority shareholders of Yukos Oil Company initiated three arbitration proceedings against the Russian Federation administered under the Energy Charter Treaty (ECT). In the arbitrations, the claimants complained of arbitrary, unfair and discriminatory treatment, and an unlawful expropriation of the company by the Russian Federation who shall compensate the damage. Based on the claimants' agreement, the three cases have been initiated in one arbitral tribunal and because of their commonalities, they became the subject of the one proceedings. In response, the Russian Federation, initially, put forwarded jurisdictional objections about the UNCITRAL Arbitration. On 30 November 2009, the arbitral tribunal issued an interim award on Jurisdiction and Admissibility and upheld its jurisdiction to hear the three cases. Finally, on 18 July 2014, the tribunal ordered the Russian Federation to pay damages in excess of USD 50 billion to the majority shareholders of Yukos Oil Company. This is by far the largest award ever rendered by an arbitral tribunal. The tribunal in the awards analyzed some main issues in investment dispute settlements which it has much to teach us in that regard. Thus, the principal aim of this article is to critically analyze the validity arbitral Award with regard to the jurisdictional objections raised by Russian Federation.

Keywords

Energy charter treaty, Yukos, Arbitration, Award, Jurisdiction.

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Requirements for Enforcement of Foreign Judgements in Iranian and Egyptian Law

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Abstract

Nowadays, due to urge of international private relations almost all legal systems consider applying the foreign law and enforcing foreign judgement as an indisputable issue. Nevertheless, the states don't consider foreign judgements like domestic judgements. They try to control foreign judgements and so set certain requirements for enforcing these judgements. Whenever the requirements are satisfied enforcing of foreign judgements is possible. The legal system of Iran and Egypt are not excluded from following this model. Some writings have been done about requirements of foreign judgements in Iranian and Egyptian law separately but there is an important question, "Are the requirements in the enforcement of foreign judgements in these states similar?" and with considering international trade law requirements which state's regulations are appropriate? The article surveys and compares Iran and Egypt's regulations to enforce foreign judgements and eliminates some ambiguities in this subject and also shows clear overlook in requirements for enforcement of foreign judgements in Iranian and Egyptian Law.

Keywords

Rendering Court, Foreign Judgement, Jurisdiction, Iran, Egypt.

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The Role of FRAND License in Facilitating Technical Standards-setting Process

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Abstract

Facing proprietary rights of individuals, standard-setting organizations have developed strategies based on intellectual property rights. One of the most important strategies is the commitment to grant Fair, Reasonable and Non-Discriminatory (FRAND) licenses. This commitment plays an important role in advancing the benefits of standardization, including interoperability, development of innovation, promotion of competition and enhancement of consumer welfare. The present study is going to demonstrate the importance of technical standards and the role of standard setting organizations in their creation and development and analyze the key role of FRAND license in determination and commercialization of standard essential patents. This paper shows that there is serious challenge between the process of choosing a standard and the exclusive rights arising from a technology, therefore, it is crucial that standard setting organizations and technology holder reach an agreement to grant specific licenses to implementers of technical standards. The aspects of the subject are not known in Iranian law and there are no special provisions in this regard. The compulsory license is not an appropriate device to reply various expectations and demands in this field, but considering and analyzing of the existing approaches and legal procedures can be beneficial and constructive to link these patents up with the standard setting process and development of technical standards related to intellectual properties.

Keywords

Technical Standard, Patent Rights, FRAND License, Essential Patent for Standard, Intellectual Property Rights.

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Ancillary Actions in Appeal Stage

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Abstract

Bringing the ancillary actions is not limited to courts of first instance but these actions could be brought in appeal courts. Nevertheless, bringing these actions in appeal courts is subject of limitations. The devolutive effect of appeal requires the transferring of what is preceded by court of first instance in appeal court. However, the absolute rejection of bringing the ancillary actions in appeal court is not acceptable. Furthermore, in some cases due to the changes of circumstances of the case after the first instance's judgment result in impossibility and ineffectiveness of procedure of appeal court. These contradictive facts require the judicial precedents to accept the ancillary actions with taking into account the logical and legal limitations.

Keywords

Ancillary Actions, Appeal, New Claim, complete Connection.

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Premature Claims in Multi-tiered Resolution Clauses

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Abstract

Multi-tiered resolution clauses may involve different stages including negotiation, mediation and arbitration or judicial proceeding for resolving the disputes. In case of certainty to the parties' intention to be bound by different stages of multi-tiered dispute resolution clauses, competent authorities make parties follow these arrangement. In respect to this enforcement questions as below are noteworthy: if prior to following the pre-arbitral stage a claim is submitted to arbitral tribunal, what authority has jurisdiction over this immature request? What is the effect of this immature request before the arbitral tribunal or court? There are two views about the matter. Some consider this clauses a matter of substantive law. Thus, the immature application is just a contractual breach which entitles the other party to compensation but doesn't violate the jurisdiction. Others suggests that these clauses are matters of procedural law and observing the pre-litigation or pre-arbitral stages are mandatory for parties. There are two opinions regarding the nature of the appropriate decision when dealing with the immature request before arbitral tribunal or courts. In accordance with the first viewpoint the request would be rejected but by the second viewpoint immature request would be stayed but suspended and after compliance with steps agreed upon by the parties, the claim would continue again. In this paper in both questions the latter arguments would be adopted as proper viewpoints.

Keywords

Premature Request, Multi-tiers Dispute Resolution Clauses, Substantive, Procedural, Jurisdiction.

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